IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 24TH AUGUST 2007/2ND BHADRA 1929

WP(C).No. 5239 of 2005(W)

PETITIONERS:

***1. ROSARY XAVIER, W/O. LATE P.V.XAVIER,**
PALAYATHAYYIL, PUNNAPRA P.O., ALAPPUZHA DISTRICT.

***2. WILSON P.X., S/O. ROSARY XAVIER, AGED 63,**
PALAYATHAYYIL VEEDU, PUNNAPRA P.O.,
ALAPPUZHA – 88 004.

3. JEROME P.X., S/O. ROSARY XAVIER, AGED 58,
-DO- -DO-

4. LYSAMMA ALEXANDER, D/O. ROSARY XAVIER, AGED 56,
PUTHENPURACKAL VEEDU, MARARIJULAM NORTH, ALAPPUZHA.

5. JOB P.X., S/O. ROSARY XAVIER, AGD 54
PALAYATHAYYIL VEEDU, PUNNAPRA P.O.,
ALAPPUZHA – 88 004.

6. GRACY SEBASTIAN, D/O. ROSARY XAVIER, AGED 43,
POONTHRASSERIL VEEDU, VADACKAL P.O., ALAPPUZHA.

***ADDL. PETITIONERS 2 TO 6 ARE IMPLEADED AS PER ORDER DATED 24/08/2007 IN IA NO. 11696/2007.**

BY ADV. SRI.K.K.SATHEESH
SMT.M.C.SHIJIMOL

RESPONDENTS:

UNION OF INDIA - REPRESENTED BY THE
UNDER SECRETARY, MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI - 110 003.

BY ADV. SRI. P.PARAMESWARAN - ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 5239/2005 W

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. H4/3374/93 DT. 18/3/93 BY THE DIST. COLLECTOR, ALAPPUZHA.

EXT.P2. COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DT. 30/3/98.

EXT.P3. COPY OF THE PKC BY SRI. SUKUMARAN DT. 20/3/98.

EXT.P4. COPY OF THE LETTER NO. H3/59/98/SR DT. -3-2000 BY THE DIST. COLLECTOR, ALAPPUZHA TO THE PETITIONER.

EXT.P5. COPY OF THE NARC BY THE SUPDT. OF POLICE, ALAPPUZHA DT. 6/6/00.

EXT.P6. COPY OF THE NARC BY THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA IN CASE NO. P.E 7/1122 ME.

EXT.P7. COPY OF THE AFFIDAVIT BY THE PETITIONER DULY ATTESTED DT. 15/4/00.

EXT.P8. COPY OF THE PKC BY SRI. KONTHI VASU DT. 10/2/00.

EXT.P9. COPY OF THE COMMUNICATION NO. 64047/FFP A2/2000/GAD DT. 22/7/00 BY THE SECRETARY TO GOVT. OF KERALA TO THE RESPONDENT.

EXT.P10. COPY OF THE COMMUNICATION NO. 19/1/1423/74/SZ DT. 13/12/00 BY THE RESPONDENT TO THE PETITIONER.

EXT.P11. COPY OF THE REPRESENTATION BY THE PETITIONER DT. 28/1/05.

EXT.P12. COPY OF THE NARC BY THE CJM COURT, ALAPPUZHA IN CASE NO. P.E. 7/1122 ME.

EXT.P13. COPY OF THE PKC BY SRI. H.K. CHAKRAPANI DT. 21/1/2005.

EXT.P14. COPY OF THE ACKNOWLEDGEMENT DUE SEALED BY THE RESPONDENT DT 4/2/05.

True copy

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 5239 of 2005-W.

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Dated this the 24th day of August, 2007.

J U D G M E N T

The petitioner's late husband Sri.P.V.Xavier was a freedom fighter who had actively participated in the Punnapra-Vayalar Movement during the freedom struggle. Against him an arrest warrant was issued by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 ME and in order to evade the arrest he had gone underground for a period of more than one year from October, 1946 to November, 1947. He was granted pension by the State Government as per order dated 30.4.1974. The petitioner's husband died on 19.9.1992 and thereafter the petitioner is getting the benefit of dependent family pension as evidenced by Ext.P1 dated 18.3.1993.

2. Ext.P2 is the application for grant of Swathanthrata Sainik Samman pension which is supported by the personal knowledge certificate issued by Sri.Sukumaran (Ext.P3). Pursuant to Ext.P4 letter issued by the District Collector, she submitted Exts.P5 and P6 non-availability of records certificates and also Ext.P7 affidavit. Ext.P8 is the personal knowledge certificate issued by Sri.Konthi Vasu. Ext.P9 shows that the State

Government has recommended the application for grant of pension.

3. But by Ext.P10 it was rejected by the Central Government. The reasons for rejection are that in the personal knowledge certificate issued by three freedom fighters the period of underground suffering varies and also that the non-availability of records certificates are not in the proper manner.

4. Thereafter the petitioner has filed a fresh representation by way of Ext.P11 enclosing Ext.P12 non-availability of records certificate from the Chief Judicial Magistrate Court, Alappuzha and Ext.P13 personal knowledge certificate issued by Sri.H.K.Chakrapani.

5. Since the application has already been recommended by the State Government it is upto the respondent to pass fresh orders on Ext.P11 after considering Exts.P12 and P13 also. To enable the Central Government to do so, Ext.P10 is quashed. There will be a direction to the respondent to pass fresh orders on Ext.P11 on its merits after considering all materials as mentioned above within a period of three months from the date of receipt of a copy of this judgment. The respondent will also consider the claim of arrears of pension from the date of receipt of application dated 6th April, 1998.

6. Since the original petitioner herein died on 15.8.2007, the supplementary petitioners impleaded as per order in IA.No.11696/2007 will

be entitled for grant of pension only for the period from 6.4.1998 to 15.8.2007 in the event of sanction of pension.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-